

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

SUSANNE STONE MARSHALL, ADELE FOX,
MARSHA PESHKIN, and RUSSELL OASIS,

Plaintiffs,

v.

CAPITAL GROWTH COMPANY; DECISIONS,
INC.; FAVORITE FUNDS; JA PRIMARY LIMITED
PARTNERSHIP; JA SPECIAL LIMITED
PARTNERSHIP; JAB PARTNERSHIP; JEMW
PARTNERSHIP; JF PARTNERSHIP; JFM
INVESTMENT COMPANIES; JLN PARTNERSHIP;
JMP LIMITED PARTNERSHIP; JEFFRY M.
PICOWER SPECIAL COMPANY; JEFFRY M.
PICOWER, P.C.; THE PICOWER FOUNDATION;
THE PICOWER INSTITUTE OF MEDICAL
RESEARCH; THE TRUST F/B/O GABRIELLE H.
PICOWER; BARBARA PICOWER, individually, and
as Executor of the Estate of Jeffry M. Picower, and as
Trustee for the Picower Foundation and for the Trust
f/b/o Gabrielle H. Picower; and IRVING H. PICARD,
Trustee for the Liquidation of Bernard L. Madoff
Investment Securities LLC,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 15-01293 (SMB)

**STIPULATION AS TO BRIEFING
SCHEDULE AND RESPONDING
TO THE COMPLAINT FOR
DECLARATORY JUDGMENT**

Plaintiffs Susanne Stone Marshall, Adele Fox, Marsha Peshkin, and Russell Oasis (collectively, the “Fox/Marshall Plaintiffs”); Defendants Capital Growth Company; Decisions, Inc.; Favorite Funds; JA Primary Limited Partnership; JA Special Limited Partnership; JAB Partnership; JEMW Partnership; JF Partnership; JFM Investment Companies; JLN Partnership; JMP Limited Partnership; Jeffry M. Picower Special Company; Jeffry M. Picower, P.C.; The Picower Foundation; The Picower Institute of Medical Research; The Trust f/b/o Gabrielle H. Picower; and Barbara Picower, individually, and as Executor of the Estate of Jeffry M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower (collectively, the “Picower Parties”); and Defendant Irving H. Picard, trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities and the estate of Bernard L. Madoff, individually (the “Trustee”), state as follows:

WHEREAS, on June 10, 2015, the Fox/Marshall Plaintiffs filed notices of appeal from the orders of the District Court for the Southern District of New York issued in Cases Nos. 15-mc-00056 (JGK) and 14-cv-6790 (JGK), which were docketed in the Court of Appeals for the Second Circuit (the “Second Circuit”) under Case Nos. 15-1869 and 15-1886 (the “Second Circuit Appeals”);

WHEREAS, on June 30, 2015, the Second Circuit issued Orders providing that if the Fox/Marshall Plaintiffs did not file their appellants’ briefs in the Second Circuit Appeals on or before September 23, 2015, the Second Circuit Appeals would be dismissed.

WHEREAS, on August 29, 2015, the Fox/Marshall Plaintiffs initiated the above-captioned adversary proceeding (the “Adversary Proceeding”) against the Picower Parties and the Trustee by filing a Complaint for Declaratory Judgment (the “Declaratory Judgment Complaint”) seeking a declaration that neither the permanent injunction issued by this Court in

its January 13, 2011 order (the “Permanent Injunction”) nor the automatic stay provisions of 11 U.S.C. § 362 (the “Automatic Stay”) prohibit the Fox/Marshall Plaintiffs from filing and prosecuting their proposed Third Amended Complaint (“Fox III”) in the United States District Court for the Southern District of Florida;

WHEREAS, on September 25, 2015, the Second Circuit issued an Order dismissing the Second Circuit Appeals;

WHEREAS, the parties have agreed to a briefing schedule to resolve the Adversary Proceeding by motion;

NOW, THEREFORE, the parties agree and stipulate as follows:

1. The Fox/Marshall Plaintiffs agree that the Second Circuit Appeals are dismissed with prejudice.
2. Counsel for the Picower Parties and counsel for the Trustee agree to accept service of process on behalf of their respective clients in this Adversary Proceeding.
3. On or before November 9, 2015, the Fox/Marshall Plaintiffs shall file a motion to determine whether Fox III is barred by the Permanent Injunction and/or the Automatic Stay.
4. On or before December 18, 2015, the Picower Parties and the Trustee shall file their respective opposition papers.
5. On or before January 15, 2016, the Fox/Marshall Plaintiffs shall file their reply brief in further support of their motion.
6. The Picower Parties and the Trustee shall not be required to file an answer or otherwise respond to the Declaratory Judgment Complaint. The Court’s final judgment and

order on the motion shall constitute the final resolution of this Adversary Proceeding by the Bankruptcy Court.

7. The pretrial conference currently scheduled for October 6, 2015 shall be adjourned until further notice from the Court.

Dated: New York, New York
September 29, 2015

CHAITMAN LLP

By: /s/ Lance Gotthoffer
Helen Davis Chaitman
Lance Gotthoffer

465 Park Avenue
New York, NY 10022
(888) 759-1114

*Attorneys for Plaintiffs Susanne Stone
Marshall, Adele Fox, Marsha Peshkin, and
Russell Oasis*

SCHULTE ROTH & ZABEL LLP

By: /s/ Marcy Ressler Harris
William D. Zabel
Marcy Ressler Harris
Michael Kwon
Jennifer M. Opheim

919 Third Avenue
New York, New York 10022
(212) 756-2000

Attorneys for Defendants Picower Parties

BAKER & HOSTETLER LLP

By: /s/ Deborah H. Renner
David J. Sheehan
Deborah H. Renner
Tracy L. Cole
Keith R. Murphy

45 Rockefeller Plaza
New York, NY 10111
(212) 589-4200

*Attorneys for Defendant Irving H. Picard, Trustee
for the Substantively Consolidated SIPA Liquidation
of Bernard L. Madoff Investment Securities LLC
and the estate of Bernard L. Madoff*

SO ORDERED:

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

Dated: September 29, 2015